IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.1997 OF 2007

Shri Balasaheb Wamanrao Wankhede ... Petitioner

Vs.

State of Maharashtra & Ors. ... Respondents

Mr. S.S. Pakale with Mr. N.D. Sharma for the petitioner.

Mr. Pradeep Jadhav, A.G.P. for the State.

Mr. P.M. Pradhan for respondent 2.

CORAM : SMT. RANJANA DESAI &
DR.D.Y. CHANDRACHUD, JJ.

DATED : SEPTEMBER 24, 2007.

P.C.:-

1. In this petition, the petitioner has challenged order dated 11/9/2007 passed by the Deputy Chairman, Maharashtra Administrative Tribunal, Mumbai whereby interim relief has been refused to him.

2. We have heard, at some length, Mr. Pakale, the learned counsel appearing for the petitioner. He contended that the

Tribunal has erred in refusing interim relief. Mr. Pakale contended that the earlier posting of respondent 2 at Thane from Kalyan was virtually her request transfer and a choice posting. He submitted that it was not a transfer on administrative grounds as stated in order dated 30/5/2007. Mr. Pakale further contended that respondent 2 did not join even for a day at Thane. She remained absent for three months and utilized three months period to find out a suitable posting of her choice that too again through political pressure of Mr. D.H. Rathod, MLC from Jalna and it is because of this political pressure that respondent 1 issued order dated 5/9/2007 whereby earlier transfer order of respondent 2 dated 30/5/2007 was cancelled and respondent 2 was transferred and posted in place of the petitioner as City Survey Officer, Borivali. He further pointed out that the order dated 5/9/2007 does not contain any reason as to why respondent 1 was required to cancel the earlier transfer order of respondent 2. Mr. Pakale contended that posting of respondent 2 in place of the petitioner is the outcome of tremendous political pressure exerted by respondent 2 upon respondent 1 and that the order of transfer of respondent 2 is not at all on any administrative grounds.

3. Mr. Pakale relied on Rule 23 of the Maharashtra Civil Services Rules which says that no government servant should use any political influence. Mr. Pakale contended that the Tribunal, therefore, erred in refusing interim relief to the petitioner and observing that prima facie there is no violation of any legal provision. He submitted that this is preeminently a fit case where interim relief ought to have been granted.

4. We are informed by the learned A.G.P. appearing for respondent 1 that respondent 2 has already taken charge. Mr. Pradhan, the learned counsel for respondent 2 denied all the contentions raised by Mr. Pakale.

5. The impugned order indicates that the original application is posted for hearing on 1/10/2007. Respondent 2 has already taken charge. In the circumstances, in our opinion, the present petition cannot be entertained. Submissions which have been advanced before us by Mr. Pakale would obviously be considered by the Tribunal at the final hearing of the application. At this stage, we do not want to express any opinion on the submission of Mr. Pakale that respondent 2 has exerted any political pressure. We may,

however, refer to the judgment of the Supreme Court dated 18/9/2007 in ***Mohd. Masood Ahmad v. State of U.P. & Ors., in Civil Appeal No.4360 of 2007 (Arising out of Special Leave Petition (Civil) No.20797 of 2005),*** wherein the Supreme Court has observed as under :

> *"7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao v. Union of India (1993) 1 SCC 148; (AIR 1939 SC 1236), National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of India. Anjan Sanyal (2001) 5 SCC 508; (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh v. State of U.P. (1997) 3 ESC 1668; (1998) All LJ 70) and Onkarnath Tiwari v. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is male fide or that the service rules prohibit such transfer or that the authorities who issued the orders, were not competent to pass the order.*
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> *8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut*

> *was made at the instance of an MLA. On the other hand, it has been stated in the counter affidavit filed on behalf of respondent Nos.1 and 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official, the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an M.P. or MLA would be vitiated. It all depends on the facts and circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order".*

6. We are sure that the Tribunal will pass appropriate orders independently and in accordance with law after hearing the parties. We, however, find it rather strange that though respondent 2 has taken charge, the petitioner has not been posted anywhere. We are informed by the learned A.G.P. that a submission has already been made to the Revenue Minister and the same is pending before him. We expect the State to take expeditious steps on the said submission.

7. It is desirable that the original application pending before the Maharashtra Administrative Tribunal is decided as expeditiously as possible.

8. The petition is rejected.

[SMT. RANJANA DESAI, J.]

[DR. D.Y.CHANDRACHUD, J.]